

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Harold Rodriguez	Team: Squad #10	CCRB Case #: 201700064	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 12/31/2016 10:37 AM	Location of Incident: Northwest corner of Cauldwell Avenue and East 149th Street	Precinct: 40	18 Mo. SOL 6/30/2018	EO SOL 6/30/2018	
Date/Time CV Reported Tue, 01/03/2017 7:21 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 01/03/2017 7:21 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Manuel Gutierrez	15714	948589	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Karla Soto	03624	961318	040 PCT
2. POM Isidore Rodriguez	09433	951161	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Manuel Gutierrez	Force: Police Officer Manuel Gutierrez used physical force against § 87(2)(b) [REDACTED]	[REDACTED]

### Case Summary

The following complaint was reported anonymously through the CCRB website on January 3, 2017. A video was provided via Facebook by a person under the alias § 87(2)(b). This case has no civilian statements and an investigation was conducted based on the video.

This case was marked as sensitive due to media coverage (Board Review 02).

According to police documents, on December 31, 2016, at approximately 10:37 a.m., § 87(2)(b) was driving on East 149 Street in the Bronx and was pulled over for using his cell phone. He was issued a summons for use of an electronic device (Board Review 04). The video obtained by the CCRB depicted PO Manuel Gutierrez of the 40<sup>th</sup> Precinct striking § 87(2)(b) in the face (**Allegation A: Force**, § 87(2)(g)) while he was on the ground and being handcuffed (Board Review 11). § 87(2)(b) was then arrested for § 87(2)(a) 160.50 (Board Review 06).

### Findings and Recommendations

#### Allegation A –Force: Police Officer Manuel Gutierrez used physical force against

§ 87(2)(b)

The complaint was filed anonymously based on a video posted on Facebook. The video was allegedly taken by § 87(2)(b) named § 87(2)(b) and posted on her Facebook account with the caption: *“This man was already in his car and the police were in the van getting ready to pull off. Granted the man did stick his head out the window and say a few choice words. But please tell me why the cops got out the van, snatched him out of his car and proceeded to do this to him. Please explain to me why the officer kept bashing his face like that.... His hands were already tied and he kept hitting the man in the face until bloody.”*



201700064\_20170104\_1456\_DM.mp4

Several messages were sent to § 87(2)(b) via Facebook and she did not reply to them. CLEAR, Lexis Nexis and other searches produced results for a different § 87(2)(b). § 87(2)(b) could not be reached and was therefore not interviewed. § 87(2)(g)

The case was placed on DA hold on January 6, 2017. § 87(2)(b) was contacted via telephone on September 19, 2017 when the DA hold on the case was lifted. § 87(2)(b) did not want to provide a statement to the CCRB or provide any additional information without speaking with his attorney and was unsure if he was going to pursue the complaint. § 87(2)(b) provided contact information for his attorney § 87(2)(b). Several contact attempts were made to § 87(2)(b) between September 19, 2017 and October 18, 2017 and voicemails were left. § 87(2)(b) was contacted again and he stated that he would tell § 87(2)(b) to contact the CCRB. § 87(2)(b)'s attorney never contacted the CCRB in regards to this complaint and therefore § 87(2)(b) did not provide a statement.

The investigation proceeded with the video posted by § 87(2)(b) which captured the force used on § 87(2)(b) but did not provide any context. The officers in the video were identified by IAB as PO Manuel Gutierrez, PO Karla Soto and PO Isidore Rodriguez of the 40<sup>th</sup> Precinct. The video begins with § 87(2)(b) on the ground face down and PO Gutierrez crouched beside his head. PO Rodriguez was crouched closer to § 87(2)(b)'s lower back, grabbing onto § 87(2)(b)'s arms and PO Soto stood behind PO Rodriguez by § 87(2)(b)'s legs. PO Gutierrez

strikes § 87(2)(b) twice with a closed hand on the left side of § 87(2)(b)'s face, then strikes him a third time with an open hand in the left side of the face. The officers remained on the ground but the rest of the video is unclear due to the view being obstructed by passing vehicles.

PO Rodriguez, PO Gutierrez and PO Soto provided fairly consistent statements and provided context to the video. § 87(2)(b) was pulled over for using his cellphone while driving. He was issued a summons for the use of the cell phone by PO Soto. PO Soto stated that § 87(2)(b) refused to take the summons from her, so she placed it on the dashboard near the windshield and walked away. All three officers consistently stated that § 87(2)(b) placed half of his body out of the driver's side window and screamed obscenities at them as they walked away. § 87(2)(b)'s screaming and cursing caused a crowd to gather at a nearby bus station. PO Gutierrez made the decision to issue § 87(2)(b) a summons for disorderly conduct. PO Gutierrez asked § 87(2)(b) to step out of the vehicle and he complied. Since there was a crowd gathering nearby, PO Gutierrez intended to take § 87(2)(b) to the 40<sup>th</sup> Precinct stationhouse to issue him a summons there for safety concerns. Once PO Gutierrez grabbed § 87(2)(b)'s wrist to handcuff him, § 87(2)(b) pulled his arms away and dove into the driver's side of his vehicle. § 87(2)(b) appeared to reach under the driver's seat, so PO Gutierrez grabbed § 87(2)(b) by the midsection and pulled him out from the vehicle. He pulled § 87(2)(b) out because he feared that § 87(2)(b) reached for a weapon. The momentum from pulling § 87(2)(b) from the vehicle caused PO Gutierrez and PO Rodriguez to fall to the ground with § 87(2)(b). Once on the ground, PO Gutierrez and PO Rodriguez issued commands for § 87(2)(b) to put his arms behind his back. PO Gutierrez, PO Rodriguez and PO Soto consistently stated that § 87(2)(b) flailed his arms and would not let them handcuff him. PO Gutierrez stated that he then struck § 87(2)(b) three times in the face to gain compliance. PO Rodriguez stated that he saw PO Gutierrez raise his arm but did not actually see PO Gutierrez strike § 87(2)(b). PO Soto stated that she stood behind PO Rodriguez and PO Gutierrez and did not see whether he struck § 87(2)(b) or not. All three officers stated that they saw a laceration to § 87(2)(b)'s face, above the eye. They could not account what specific action caused the cut.

Although PO Rodriguez, PO Gutierrez and PO Soto stated that § 87(2)(b) flailed his arms and refused to place his arms behind his back, the video provided did not show § 87(2)(b) flailing his arms. During the video, § 87(2)(b) appeared to be face down on the ground and not moving. PO Gutierrez held § 87(2)(b) down by the head while PO Rodriguez held him by the arms and appeared to be attempting to restrain him. PO Gutierrez struck § 87(2)(b) in the face three times while § 87(2)(b) was on the ground and did not appear to struggle. PO Soto's memo book and the arrest report prepared by PO Gutierrez support the officers' statements that § 87(2)(b) was flailing his arms and refusing to put his arms behind his back (Board Review 06, 12, 13). Based on § 87(2)(b)'s arrest photo (Board Review 05), he sustained a black eye and a laceration over his eye. § 87(2)(g)

§ 87(2)(b) Patrol Guide Procedure 221-02 (Board Review 10) states that an officer must use the minimal amount of force necessary to gain compliance. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(g)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint involving § 87(2)(b) (Board Review 03).
- PO Gutierrez has been a member of service for 7 years, has been involved in four CCRB cases and has 10 allegations against him.
  - In CCRB 201400407, PO Gutierrez had a physical force allegation substantiated against him and he received Command Discipline B from the NYPD.
  - In CCRB 201601314, PO Gutierrez had a use of pepper spray allegation substantiated against him. He was found “not guilty” in the APU trial.

### **Mediation, Civil and Criminal Histories**

- This case was unsuitable for mediation due to § 87(2)(b)'s injuries and the case being on DA hold.
- A Notice of Claims request returned negative from the NYC Comptroller's office on February 1, 2018. However, the Law Department contacted the CCRB prior to this request and confirmed that § 87(2)(b) did in fact have a lawsuit against the City of New York.
- § 87(2)(b) § 87(2)(c)
- § 87(2)(b) § 87(2)(c)
- § 87(2)(b) § 87(2)(c)
- § 87(2)(b) § 87(2)(c)
- § 87(2)(b) § 87(2)(c)

Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date